

§ 58.23

28 CFR Ch. I (7–1–15 Edition)

(2) Whether counseling services were provided in person, by telephone or via the Internet;

(3) The date and time (including the time zone) on which counseling services were completed by the client; and

(4) The name of the counselor that provided the counseling services.

(o) An approved agency shall affix the client's full, accurate name to the certificate. If the counseling services are obtained by a client through a duly authorized representative, the certificate also shall set forth the name of the legal representative and legal capacity of that representative.

(p) If an individual enters into a debt repayment plan after completing credit counseling, upon the client's request after the completion or termination of the debt repayment plan, the approved agency shall:

(1) Provide such additional credit counseling as is necessary at such time to comply with the requirements specified in 11 U.S.C. 109(h) and 111, and this part, including reviewing the client's current financial condition and counseling the client regarding the alternatives to resolve the client's credit problems;

(2) Send a certificate to the client no later than one business day after the client completed such additional counseling; and

(3) Not charge the client any additional fee except any separate fee charged for the issuance of the certificate, in accordance with § 58.20(1)(1).

[78 FR 16153, Mar. 14, 2013]

§ 58.23 Minimum financial requirements and bonding and insurance requirements for agencies offering debt repayment plans.

If an agency offers or has offered debt repayment plans, an agency shall possess adequate financial resources to provide continuing support services for such plans over the life of any debt repayment plan, and provide for the safekeeping of client funds, which shall include:

(a) Depositing all client funds into a deposit account, held in trust, at a federally insured depository institution. Each such trust account shall be established in a fiduciary capacity and shall be in full compliance with federal law

such that each client's funds shall be protected by federal deposit insurance up to the maximum amount allowable by federal law.

(b) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency, including without limitation, all of the following:

(1) Separate files for each client's account that include copies of all correspondence with or on behalf of the client, including:

(i) All agreements with all entities, including the contract between the agency and the client and any amendments thereto;

(ii) The analysis of the client's budget;

(iii) Correspondence between the agency and the client's creditors;

(iv) The notice given to creditors of any debt repayment plan; and

(v) All written statements of account provided to the client and subsidiary ledgers concerning any debt repayment plan;

(2) A trust account general ledger reflecting all deposits to and disbursements from all trust accounts, which shall be kept current at all times;

(3) A reconciliation of the trust accounts, prepared at least once a month; and

(4) An operating account general ledger reflecting all of the agency's financial transactions involving the agency's operating account, which shall be kept current at least on a monthly basis.

(c) Allowing an independent certified public accounting firm to audit the trust accounts annually in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants and any Statement of Work prepared by the United States Trustee, which audit shall include:

(1) A report of all trust account activity including:

(i) The balance of each trust account at the beginning and end of the period;

(ii) The total of all receipts from clients and disbursements to creditors during the reporting period;

(iii) The total of all disbursements to the agency; and

Department of Justice

§ 58.23

(iv) The reconciliation of each trust account;

(2) A report of all exceptions (e.g., discrepancies, irregularities, and errors) found, regardless of materiality; and

(3) An evaluation of the agency's trust account internal controls and its computer operations to determine whether it provides a reasonable assurance that the trust funds are safeguarded against loss from unauthorized use or disposition.

(d) Obtaining a surety bond payable to the United States, as follows:

(1) Subject to the minimum amount of \$5,000, the amount of such surety bond shall be the lesser of:

(i) Two percent of the agency's disbursements made during the twelve months immediately prior to submission of the application from all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee; or

(ii) Equal to the average daily balance maintained for the six months immediately prior to submission of the application in all trust accounts attributable to the federal judicial districts (or, if not feasible to determine, the states) in which the agency seeks approval from the United States Trustee;

(2) The agency may receive an offset or credit against the surety bond amount determined under paragraph (d)(1) of this section if:

(i) The agency has previously obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit in compliance with the licensing requirements of the state in which the agency seeks approval from the United States Trustee;

(ii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) Such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, is written in favor of the state or the appropriate state agency; and

(iv) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit; or

(B) The surety bond amount determined under paragraph (d)(1) of this section;

(3) If an agency has contracted with an independent contractor to administer any part of its debt repayment plans:

(i) Except as provided in paragraphs (d)(3)(ii) and (d)(3)(iii) of this section, the independent contractor shall:

(A) Be an approved agency; or

(B) If the independent contractor is not an approved agency, then the independent contractor shall:

(1) Be specifically covered under the agency's surety bond required under paragraph (d)(1) of this section; or

(2) Have a surety bond that meets the requirements of paragraph (d)(1) of this section; and

(3) Agree in writing to allow the United States Trustee to audit the independent contractor's trust accounts for the debt repayment plans administered on behalf of the agency and to review the independent contractor's internal controls and administrative procedures;

(ii) If the independent contractor holds funds for transmission for five days or less, then the amount of the required surety bond under paragraph (d)(3)(i)(B) of this section shall be \$500,000;

(iii) If the independent contractor performs only electronic fund transfers on the agency's behalf, then the independent contractor need not satisfy the requirements of paragraph (d)(3)(i) of this section during such time as the independent contractor is authorized by the National Automated Clearing House Association to participate in the Automated Clearing House system.

(e) Obtaining either adequate employee bonding or fidelity insurance, as follows:

(1) Subject to the minimum amount set forth below, the amount of such bonding or fidelity insurance shall be 50 percent of the surety bond amount calculated under paragraph (d)(1) of

§ 58.24

28 CFR Ch. I (7–1–15 Edition)

this section, prior to any offset or credit that the agency may receive under paragraph (d)(2) of this section; provided, however, that at a minimum, the employee bond or fidelity insurance must be \$5,000;

(2) An agency may receive an offset or credit against the employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section if:

(i) The agency has previously obtained an employee bond or fidelity insurance in compliance with the requirements of a state in which the agency seeks approval from the United States Trustee; and

(ii) The deductible does not exceed a reasonable amount considering the financial resources of the agency; and

(iii) The amount of the offset or credit shall be the lesser of:

(A) The principal amount of such employee bond or fidelity insurance; or

(B) The employee bond or fidelity insurance amount determined under paragraph (e)(1) of this section.

(f) An agency that ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. 109(h) shall, concerning any debt repayment plans it services that remain in existence with respect to such individuals as of the date it ceases to offer debt repayment plans to new clients, continue to comply with all of the requirements of this section.

(1) The agency may seek a waiver of the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section if:

(i) The agency has in effect, as of the date it ceases to offer debt repayment plans, a written agreement to transfer all such debt repayment plans to another approved agency for servicing, provided that:

(A) Transfers to another approved agency pursuant to such agreements must be completed within 60 days of the date the agency ceases to offer debt repayment plans to individuals who receive counseling from such agency pursuant to 11 U.S.C. § 109(h); and

(B) The agency provides written notice to clients whose debt repayment plans it intends to transfer within the time described in paragraph (f)(1)(i)(A) of this section, identifying the ap-

proved agency to which the clients' plans will be transferred, any fees associated with servicing by the approved agency, and any fees associated with the transfer; or

(ii) In the reasonable determination of the United States Trustee, taking into account the facts and circumstances surrounding the agency's business and the terms of the bond, compliance with the bonding and insurance requirements set forth in paragraphs (d) and (e) of this section would impose an undue hardship on the agency.

[78 FR 16153, Mar. 14, 2013]

§ 58.24 Procedures for obtaining final agency action on United States Trustee's decisions to deny agencies' applications and to remove approved agencies from the approved list.

(a) The United States Trustee shall remove an approved agency from the approved list whenever an approved agency requests its removal in writing.

(b) The United States Trustee may issue a decision to remove an approved agency from the approved list, and thereby terminate the approved agency's authorization to provide counseling services, at any time.

(c) The United States Trustee may issue a decision to deny an agency's application or to remove an agency from the approved list whenever the United States Trustee determines that the agency has failed to comply with the standards or requirements specified in 11 U.S.C. 109(h) or 111, this part, or the terms under which the United States Trustee designated it to act as an approved agency, including, but not limited to, finding any of the following:

(1) The agency is not employing adequate procedures for safekeeping of client funds or paying client funds, which could result in a loss to a client;

(2) The agency's surety bond has been canceled;

(3) Any entity has revoked the agency's nonprofit status, even if that revocation is subject to further administrative or judicial litigation, review or appeal;

(4) Any entity has suspended or revoked the agency's license to do business in any jurisdiction; or